

**NOT FOR PUBLICATION**

**SEP 19 2006**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

HENRY ALBANEZ,

Plaintiff - Appellant,

v.

DWIGHT WINSLOW; et al.,

Defendants - Appellees.

No. 05-16758

D.C. No. CV-04-01958-VRW

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Vaughn R. Walker, District Judge, Presiding

Submitted September 11, 2006 <sup>\*\*</sup>

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

California state prisoner Henry Albanez appeals pro se from the district court's order granting summary judgment in favor of defendants in his 42 U.S.C. § 1983 action alleging defendants acted with deliberate indifference to his medical

---

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's grant of summary judgment, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment in favor of defendants, because the evidence does not create a material issue of fact as to whether the treatment of fungus on Albanez's fingernails and toenails was medically unacceptable under the circumstances or chosen in conscious disregard of an excessive risk to Albanez's health. *See id.* at 1058.

**AFFIRMED.**